

## Update: Adoption Proceedings Benchbook

### CHAPTER 2

#### Freeing a Child for Adoption

##### 2.12 Termination Pursuant to the Adoption Code

###### B. Putative Father's Identity or Whereabouts Are Unknown

Effective May 1, 2006, MCR 3.802(B)(1) was amended to reflect the May 2002 amendment to MCR 3.802(A)(2) that eliminated sub-subrules (a) and (b). On page 51, in the first sentence of the quotation of MCR 3.802(B)(1), change “subrule (A)(2)(a)” to “subrule (A)(2)” and delete the corresponding sidenote.

The rule amendment did not correct the reference to “subrule (A)(2)(a)” contained in MCR 3.802(B)(2)(a), quoted on page 51.

## CHAPTER 3

### Identifying the Father

#### 3.4 Hearing to Identify the Father Pursuant to the Adoption Code

##### A. Notice

Effective May 1, 2006, MCR 3.802(B)(1) was amended to reflect the May 2002 amendment to MCR 3.802(A)(2) that eliminated sub-subrules (a) and (b). On page 86, in the first sentence of the quotation of MCR 3.802(B)(1), change “subrule (A)(2)(a)” to “subrule (A)(2)” and delete the corresponding sidenote.

The rule amendment did not correct the reference to “subrule (A)(2)(a)” contained in MCR 3.802(B)(2)(a), quoted on page 86.

## CHAPTER 3

### Identifying the Father

#### 3.7 Acknowledgment of Parentage

##### A. The Acknowledgment

Effective April 7, 2006, 2006 PA 105 amended MCL 722.1007. Beginning at the bottom of page 93 and continuing on page 94, replace the quotation of MCL 722.1007 with the following text:

“The acknowledgment of parentage form shall include at least all of the following written notices to the parties:

(a) The acknowledgment of parentage is a legal document.

(b) Completion of the acknowledgment is voluntary.

(c) The mother has initial custody of the child, without prejudice to the determination of either parent’s custodial rights, until otherwise determined by the court or agreed by the parties in writing and acknowledged by the court. This grant of initial custody to the mother shall not, by itself, affect the rights of either parent in a proceeding to seek a court order for custody or parenting time.

(d) Either parent may assert a claim in court for parenting time or custody.

(e) The parents have a right to notice and a hearing regarding the adoption of the child.

(f) Both parents have the responsibility to support the child and to comply with a court or administrative order for the child’s support.

(g) Notice that signing the acknowledgment waives the following:

(i) Blood or genetic tests to determine if the man is the biological father of the child.

(ii) Any right to an attorney, including the prosecuting attorney or an attorney appointed by the court in the case of indigency, to represent either party in a court action to determine if the man is the biological father of the child.

(iii) A trial to determine if the man is the biological father of the child.

(h) That in order to revoke an acknowledgement of parentage, an individual must file a claim as provided under section 11.”

### **C. Determining Custody**

Effective April 7, 2006, 2006 PA 105 amended MCL 722.1006 to eliminate the presumption of custody that arose once a mother and father signed an acknowledgment of parentage form. In the middle of page 95, change the title to the subsection as indicated above and replace the text of subsection (C) in its entirety with the following text:

“After a mother and father sign an acknowledgment of parentage, the mother has initial custody of the minor child, without prejudice to the determination of either parent’s custodial rights, until otherwise determined by the court or otherwise agreed upon by the parties in writing and acknowledged by the court. This grant of initial custody to the mother shall not, by itself, affect the rights of either parent in a proceeding to seek a court order for custody or parenting time.” MCL 722.1006.

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### CHAPTER 5

#### Temporary Placements, Investigation Reports, and the Safe Delivery of Newborns

##### 5.2 Preplacement Assessments

Effective March 2, 2006, 2006 PA 41 amended the law governing preplacement assessments to require a child placing agency to request that an individual seeking a preplacement assessment undergo a physical examination to ensure his or her physical ability to care for an adoptee. Insert the following text on page 161, immediately before subsection (A):

MCL 710.23f(7) provides:

“A child placing agency shall request an individual seeking a preplacement assessment to undergo a physical examination conducted by a licensed physician, a licensed physician’s assistant, or a certified nurse practitioner to determine that the individual is free from any known condition that would affect his or her ability to care for an adoptee. If an individual has had a physical examination within the 12 months immediately preceding his or her request for a preplacement assessment, he or she may submit a medical statement that is signed and dated by the licensed physician, licensed physician’s assistant, or certified nurse practitioner verifying that he or she has had a physical examination within the previous 12-month period and is free from any known condition that would affect his or her ability to care for an adoptee. This subsection does not require new or additional third party reimbursement or worker’s compensation benefits for services rendered.” MCL 710.23f(7).

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### CHAPTER 3

#### Identifying the Father

#### 3.7 Acknowledgment of Parentage

##### D. Revocation of Acknowledgment

##### 3. Court Determination

On page 96, at the end of the second full paragraph, add the following text:

In *Killingbeck v Killingbeck*, \_\_\_ Mich App \_\_\_, \_\_\_ (2005), plaintiff resided with defendant prior to the birth of her son. Plaintiff acknowledged having a relationship with another man, Rosebrugh, during this same time period. Plaintiff continued to reside with defendant after the birth of her son, and defendant signed an acknowledgment of parentage, acting as the child's father for the first four years of his life. Plaintiff and defendant subsequently married, but shortly thereafter, plaintiff filed for divorce. Plaintiff then contacted Rosebrugh and arranged for genetic testing, which confirmed that Rosebrugh, not defendant, was the child's biological father. One year later, plaintiff and Rosebrugh filed a paternity action seeking to revoke defendant's acknowledgement of parentage. In the interim, the judgment of divorce listed the minor child as a child of plaintiff and defendant.

Plaintiff, defendant, and Rosebrugh initially reached an agreement that was reduced by the trial court to orders revoking defendant's acknowledgement of parentage and amending the child's birth certificate. The trial court also ordered that defendant continue to have the rights of a *de facto* father. Rosebrugh, after being permitted to intervene in plaintiff and defendant's divorce action, sought to set aside the prior court orders and terminate all of defendant's legal rights and responsibilities to the minor child, arguing, based on the genetic determination of paternity, that no legal basis existed for defendant to assert parental rights. Ultimately, the trial court entered an order in the paternity action removing defendant as a party and terminating his parental rights. Rosebrugh and plaintiff were granted joint custody, with sole physical custody to plaintiff. Rosebrugh and defendant were each ordered to

have specific, separate parenting time, and Rosebrugh was ordered to pay child support.

On appeal, the *Killingbeck* Court determined, based on *Van v Zahorik*, 460 Mich 320 (1999), that reliance upon the equitable parent or equitable estoppel doctrines to grant defendant parenting time was foreclosed because the child was not “born or conceived during the marriage.” To the extent the trial court relied on these doctrines to grant defendant parenting time, the order was entered in error. The *Killingbeck* Court vacated the order revoking defendant’s acknowledgement of parentage because it was not warranted by the equities of the case, MCL 722.1011(3), and because it was based on a mistake of law by the trial court. The Court also reversed the order granting defendant parenting time as a *de facto* father. The matter was remanded to the trial court because the equities of the case justified defendant’s continuing right to parenting time and, had it not erred in its understanding and application of the law, the trial court might have weighed the equities of the case differently if it had realized that revocation of defendant’s acknowledgement of parentage would preclude his right to parenting time with the minor child.

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